



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XC161]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Testing and Training Operations in the Eglin Gulf Test and Training Range

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application for Letter of Authorization; request for comments and information.

SUMMARY: NMFS has received a request from the United States (U.S.) Department of the Air Force (USAF) for authorization to take marine mammals incidental to testing and training military operations proposed to be conducted in the Eglin Gulf Test and Training Range (EGTTR) from 2023–2030 in the Gulf of Mexico. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of the Eglin Air Force Base (AFB) request for the development and implementation of regulations governing the incidental taking of marine mammals. NMFS invites the public to provide information, suggestions, and comments on the Navy’s application and request.

DATES: Comments and information must be received no later than [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: Comments on the application should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be sent to ITP.Pauline@noaa.gov.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period.

Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities* without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Rob Pauline, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Availability

Electronic copies of the Navy's application and separate monitoring plan may be obtained online at: *<https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities>*.

In case of problems accessing these documents, please call the contact listed above.

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence

uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as “...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.”

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

The National Defense Authorization Act (NDAA) for Fiscal Year 2004 (Pub. L. 108-136) removed the “small numbers” and “specified geographical region” limitations indicated above and amended the definition of “harassment” as it applies to a “military readiness activity” to read as follows (Section 3(18)(B) of the MMPA): (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild (Level A Harassment); or (ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered (Level B Harassment). On August 13, 2018, the 2019 NDAA (Pub. L. 115-232) amended the MMPA to allow incidental take regulations for military readiness activities to be issued for up to seven years. The proposed action may

incidentally expose marine mammals occurring in the vicinity of testing and training operations to elevated levels of underwater sounds in the form of airborne, surface and subsurface detonations of various military munitions, thereby resulting in incidental take, by Level A and Level B harassment. Therefore, the DAF requests authorization to incidentally take marine mammals.

Summary of Request

On June 17, 2022 NMFS received an adequate and complete application from the Eglin AFB requesting authorization for the take of marine mammals, by Level A and B harassment, incidental to testing and training operations (all categorized as military readiness activities). Proposed missions would include be air-to-surface operations that involve firing live or inert munitions, including missiles, bombs, and gun ammunition, from aircraft at targets on the water surface. The types of targets used vary by mission and primarily include stationary, remotely controlled, and towed boats, inflatable targets, and marker flares. Live munitions used in the EGTTR are set to detonate either in the air a few feet above the water surface (airburst detonation), instantaneously upon contact with the water or target (surface detonation), or approximately 5 to 10 feet (1.5 to 3 meters) below the water surface (subsurface detonation). Therefore, Eglin AFB requests authorization to take three species of marine mammals that may occur in this area, Rice's whale (*Balaenoptera ricei*) Atlantic bottlenose dolphins (*Tursiops truncatus*) and Atlantic spotted dolphins (*Stenella frontalis*).

Eglin AFB is also proposing to create and use a new, separate area within the EGTTR that would be used for live missions in addition to the existing live impact area (LIA). Referred to as the East LIA, it is located approximately 40 nautical miles southeast of the existing LIA. The requested regulations will be valid for seven years, from 2023 through 2030.

NMFS issued incidental take regulations and a subsequent Letter of Authorization (LOA) to Eglin AFB for similar specified activities on February 8, 2018 (83 FR 5545). Prior to issuing the 5-year LOA in 2018, NMFS had issued multiple LOAs and 1 year incidental harassment authorizations (IHA) to Eglin AFB for take of marine mammals incidental to similar specified activities. Monitoring reports submitted to NMFS as a condition of the previously-issued LOAs and incidental take authorizations are available online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities>.

Specified Activities

Eglin AFB proposes the following actions in the EGTTR which would be conducted in the existing LIA and potentially in the proposed East LIA, depending on the mission type and objectives: 1) 52rd Weapons Evaluation Group missions that involves air-to-ground Weapons System Evaluation Program (WSEP) known as Combat Hammer which tests various types of munitions against small target boats and air-to-air missile testing known as Combat Archer; 2) The Air Force Special Operations Command (AFSOC) proposes to continue training missions in the EGTTR primarily involving air-to-surface gunnery, bomb, and missile exercises including AC-130 gunnery training, CV-22 training, and bomb and missile training; 3) 96th Operations Group missions including AC-130 gunnery testing against floating marker targets on the water surface and MQ-9 air-to-surface testing; 3) 780th Test Squadron Precision Strike Weapons testing including air-launched cruise missile tests, Air-to-air missile tests, Longbow and Joint Air-to-Ground Missile (JAGM) testing; Spike Non-Line-of-Sight (NLOS) air-to-surface missile testing, Patriot missile testing, Hypersonic Weapon Testing, sink at-sea live-fire training exercises (SINKEX), and testing using live and inert munitions against targets on the water surface; and 4) Naval School Explosive Ordnance Disposal (NAVSCOLEOD)

training missions that involve students diving and placing small explosive charges adjacent to inert mines.

During these activities, ordnances may be delivered by multiple types of aircraft, including bombers and fighter aircraft. Net explosive weights (NEW) of the live munitions range from 0.1 to 945 pounds (lb). A summary of munitions proposed for missions in the EGTTR is shown in Table 1.

Table 1. Summary of Proposed Munitions for Missions in the EGTTR

User Group	Type	Category	Net Explosive Weight	Destination Scenario	Annual Quantity
53 WEG	AGR-20	Rocket	9.1	Surface	12
	AGM-158D JASSM XR	Missile	240.26	Surface	4
	AGM-158B JASSM ER	Missile	240.26	Surface	3
	AGM-158A JASSM	Missile	240.26	Surface	3
	AGM-65D	Missile	150	Surface	5
	AGM-65G2	Missile	145	Surface	5
	AGM-65H2	Missile	150	Surface	5
	AGM-65K2	Missile	145	Surface	4
	AGM-65L	Missile	150	Surface	5
	AGM-114 N-6D with TM	Missile	29.1	Surface	4
	AGM-114 N-4D with TM	Missile	29.94	Surface	4
	AGM-114 R2 with TM (R10)	Missile	27.41	Surface	4
	AGM-114 R-9E with TM (R11)	Missile	27.38	Surface	4
	AGM-114Q with TM	Missile	20.16	Surface	4
	CBU-105D	Bomb	108.6	HOB	8
	GBU-53/B (GTV)	Bomb	0.34 ^a	HOB/Surface	8
	GBU-39 SDB (GTV)	Bomb	0.39 ^a	Surface	4
	AGM-88C w/FTS	Missile	0.70 ^a	Surface	2
	AGM-88B w/FTS	Missile	0.70 ^a	Surface	2
	AGM-88F w/FTS	Missile	0.70 ^a	Surface	2
	AGM-88G w/FTS	Missile	0.70 ^a	Surface	2
	AGM-179 JAGM	Missile	27.47	Surface	4

	GBU-69	Bomb	6.88	Surface	2
	GBU-70	Bomb	6.88	Surface	1
	AGM-176	Missile	8.14	Surface	4
	GBU-54 KMU-572C/B	Bomb	193	Surface	1
	AIM-120C3	Missile	117.94	HOB/Surface	4
	AIM-120B	Missile	102.65	HOB	18
	AIM-9X Blk I	Missile	60.25	HOB	7
	AIM-9X Blk I	Missile	67.9	HOB/Surface	10
	AIM-9X Blk II	Missile	60.25	HOB	24
	AIM-9M-9	Missile	60.55	HOB	90
	Inert Munitions				
	ADM-160B MALD	Missile	N/A	N/A	4
	ADM-160C MALD-J	Missile	N/A	N/A	4
	ADM-160C-1 MALD-J	Missile	N/A	N/A	4
	ADM-160D MALD-J	Missile	N/A	N/A	4
	GBU-10	Bomb	N/A	N/A	8
	GBU-12	Bomb	N/A	N/A	32
	GBU-49	Bomb	N/A	N/A	16
	GBU-24/B (84)	Bomb	N/A	N/A	16
	GBU-24A/B (109)	Bomb	N/A	N/A	2
	GBU-31B(v)1	Bomb	N/A	N/A	16
	GBU-31C(v)1	Bomb	N/A	N/A	16
	GBU-31B(v)3	Bomb	N/A	N/A	2
	GBU-31C(v)3	Bomb	N/A	N/A	2
	GBU-32C	Bomb	N/A	N/A	8
	GBU-38B	Bomb	N/A	N/A	4
	GBU-38C w/BDU-50 (No TM)	Bomb	N/A	N/A	4
	GBU-38C	Bomb	N/A	N/A	10
	GBU-54 KMU-572C/B	Bomb	N/A	N/A	4
	GBU-54 KMU-572B/B	Bomb	N/A	N/A	4
	GBU-69	Bomb	N/A	N/A	2
	BDU-56A/B	Bomb	N/A	N/A	4
	PGU-27 (20 mm)	Gun Ammunition	0.09	N/A	16,000
	PGU-15 (30 mm)	Gun Ammunition	N/A	N/A	16,000

	PGU-25 (25 mm)	Gun Ammunition	N/A	N/A	16,000
	ALE-50	Decoy System	N/A	N/A	6
	AIM-260A JATM	Missile	N/A	N/A	4
	PGU-27 (20 mm)	Gun Ammunition	N/A	N/A	80,000
	PGU-23 (25 mm)	Gun Ammunition	N/A	N/A	6,000
	MJU-7A/B Flare	Flare	N/A	N/A	1,800
	R-188 Chaff	Chaff	N/A	N/A	6,000
	R-196 (T-1) Chaff	Chaff	N/A	N/A	1,500
AFSOC	Live Munitions				
	105 mm HE (FU)	Gun Ammunition	4.7	Surface	750
	105 mm HE (TR)	Gun Ammunition	0.35	Surface	1,350
	30 mm HE	Gun Ammunition	0.1	Surface	35,000
	AGM-176 Griffin	Missile	4.58	HOB	100
	AGM-114R9E/R2 Hellfire	Missile	20.0	HOB	70
	2.75-inch Rocket (including APKWS)	Rocket	2.3	Surface	400
	GBU-12	Bomb	198.0/298.0	Surface	30
	Mk-81 (GP 250 lb)	Bomb	151.0	Surface	30
	GBU-39 (SDB I)	Bomb	37.0	HOB	30
	GBU-69	Bomb	36.0	HOB	40
	Inert Munitions				
	.50 caliber	Gun Ammunition	N/A	N/A	30,000
	GBU-12	Bomb	N/A	N/A	30
	MkK-81 (GP 250 lb)	Bomb	N/A	N/A	30
	BDU-50	Bomb	N/A	N/A	30
	BDU-33	Bomb	N/A	N/A	50
96 OG	Live Munitions				
	AGM-176 Griffin	Missile	4.58	Surface	10
	AGM-114 Hellfire	Missile	20.0	Surface	10
	GBU-39 (SDB I)	Bomb	37.0	Surface	6
	GBU-39 (LSDB)	Bomb	37.0	Surface	10
	105 mm HE (FU)	Gun Ammunition	4.7	Surface	60
	105 mm HE (TR)	Gun Ammunition	0.35	Surface	60
	30 mm HE	Gun Ammunition	0.1	Surface	99
	AGM-114R Hellfire	Missile	20.0	Surface	36

AIM-9X	Missile	7.9	HOB	1
GBU-39B/B LSDB	Bomb	37.0	Surface	2
AGM-158 (JASSM)	Missile	240.26	Surface	2
GBU-39 (SDB I)	Bomb	37.0	HOB/Surface	2
GBU-39 (SDB I) Simultaneous Launch	Bomb	74.0	HOB/Surface	2
GBU-53 (SDB II)	Bomb	22.84	HOB/Surface	2
AGM-114L Longbow	Missile	35.95	HOB	6
AGM-179A JAGM	Missile	27.47	HOB	8
Spike NLOS	Missile	34.08	Surface	3
PAC-2	Missile	145.0c	N/A (drone target)	2
PAC-3	Missile	145.0c	N/A (drone target)	2
HACM	Hypersonic Weapon	350e	Surface	1
PrSM	Hypersonic Weapon	46e	HOB	2
SINKEX	Vessel Sinking Exercise	Not Available	Not Available	2
GBU-10, 24, or 31 (QUICKSINK)	Bomb	945	Subsurface	4 to 8
2,000 lb bomb with JDAM kit	Bomb	945 or less	HOB	2
Inert GBU-39 (LSDB) with live fuze	Bomb	0.4	HOB/Surface	4
Inert GBU-53 (SDB II) with live fuze	Bomb	0.4	HOB/Surface	4
Inert Munitions				
GBU-39B/B LSDB	Bomb	N/A	N/A	2
GBU-49	Bomb	N/A	N/A	10
GBU-48	Bomb	N/A	N/A	1
AGM-158 (JASSM)	Missile	N/A	N/A	4
GBU-39 (SDB I)	Bomb	N/A	N/A	4
GBU-39 (SDB I) Simultaneous Launch	Bomb	N/A	N/A	4
GBU-53 (SDB II)	Bomb	N/A	N/A	1
AIM-260 JATM - Inert	Missile	N/A	N/A	6
AIM-9X - Inert	Missile	N/A	N/A	10

	AIM-120 AMRAAM - Inert	Missile	N/A	N/A	15
	PrSM - Inert	Hypersonic Weapon	N/A	N/A	2
	SiAW AARGM-ER	Missile	N/A	N/A	7
	Multipurpose Booster	Booster	N/A	N/A	1
	JDAM ER	Bomb	N/A	N/A	3
	Navy HAAWC	Torpedo	N/A	N/A	2
	Mk-84 (GP 2,000 lb) ^c	Bomb	N/A	N/A	9
NAVSCOLEOD	Underwater Mine Charge	Charge	20 ^d	Subsurface	32
	Floating Mine Charge	Charge	5 ^d	Surface	80

^a Warhead replaced by FTS/TM. Identified 1 NEW is for the FTS.

^b NEW is doubled for simultaneous launch.

^c Assumed for impact analysis.

^d Estimated.

^e NEW at impact/detonation

53 WEG = 53rd Weapons Evaluation Group; 780 TS = 780th Test Squadron; 96 OG = 96th Operations Group; AARGMER = Advanced Anti-Radiation Guided Missile - Extended Range; ABMS = Advanced Battle Management System; ADM = American Decoy Missile; AFSOC = Air Force Special Operations Command; AGM = Air-to-Ground Missile; AIM = Air Intercept Missile; ALE = Ammunition Loading Equipment; AMRAAM = Advanced Medium-Range Air-to-Air Missile; APKWS = Advanced Precision Kill Weapon System; BDU = Bomb Dummy Unit; C-RAM = Counter, Rocket, Artillery, and Mortar; CBU = Cluster Bomb Unit; EGTTR = Eglin Gulf Test and Training Range; ER = Extended Range; FTS = Flight Termination System; FU = Full Up; GBU = Guided Bomb Unit; GP = General Purpose; GTV = Guided Test Vehicle; HAAWC = High Altitude Anti-Submarine Warfare Weapon Capability; HACM = Hypersonic Attack Cruise Missile; HE = High Explosive; HOB = height of burst; JDAM = Joint Direct Attack Munition; JAGM = Joint Air-to-Ground Missile; JASSM = Joint Air-to-Surface Standoff Missile; JATM = Joint Advanced Tactical Missile; LAICRM = Large Aircraft Infrared Counter Measure; lb = pound(s); LSDB = Laser Small-Diameter Bomb; MALD = Miniature Air-Launched Decoy; MJU = Mobile Jettison Unit; Mk = Mark; mm = millimeter(s); N/A = not applicable; NLOS = Non-Line-of-Sight; NAVSCOLEOD = Naval School Explosive Ordnance Disposal; PAC = Patriot Advanced Capability; PGU = Projectile Gun Unit; SDB = Small-Diameter Bomb; SiAW = Stand-in Attack Weapon; SRI = Santa Rosa Island; TA = Test Area; TBD = to be determined; TM = telemetry; TR = Training Round

Information Solicited

Interested persons may submit information, suggestions, and comments concerning the USAF's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by the USAF, if appropriate.

Dated: July 12, 2022.

Catherine Marzin,
Deputy Director, Office of Protected Resources,
National Marine Fisheries Service.

